(19)

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1943.

No. 615

JASPER CHAIR COMPANY, a Corporation,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals for the Seventh Circuit.

ISIDOR KAHN,
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To the United States Circuit Court of Appeals for the Seventh Circuit.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows:

I.

SUMMARY AND SHORT STATEMENT OF THE MATTER INVOLVED.

The National Labor Relations Board, the petitioner in the court below, filed in said court an appendix to petitioner's brief. The Jasper Chair Company, respondent in the court below, filed in said court an appendix to respond-

ent's brief. Both were printed and are being used as a part of the printed record being submitted with this petition. The appendix prepared by the National Labor Relations Board is hereinafter for convenience referred to as "B. A.," while the appendix prepared by the respondent is hereinafter for convenience referred to as "R. A."

On July 24, 1942, a charge was filed with the National Labor Relations Board, Eleventh Region, by United Furniture Workers of America, affiliated with the CIO, charging this petitioner with having engaged in and being engaged in unfair labor practices within the meaning of Section 8, subsections (1) and (3) of the National Labor Relations Act (B. A. 5). Subsequently, and upon said charge, the National Labor Relations Board filed a complaint against this petitioner (B. A. 6-9) and caused same, together with a notice of hearing (B. A. 10), to be served upon the petitioner. Upon issues joined by petitioner's answer to said complaint (B. A. 11-13), a hearing was held before a Trial Examiner beginning on August the 24th, 1942, and terminating on August the 27th, 1942. On September the 28th, 1942, the Trial Examiner filed his Intermediate Report (B. A. 16-34), to which the petitioner filed exceptions. Thereafter on December 31, 1942, the National Labor Relations Board made its purported Decision and Order (B. A. 13-15). On or about March 17, 1943, the National Labor Relations Board filed in the United States Circuit Court of Appeals for the Seventh Circuit its petition for enforcement of the aforesaid purported Decision and Order of the National Labor Relations Board (B. A. 1-4). Following the filing of briefs and an oral argument, on the 6th day of November, 1943, the aforesaid United States Circuit Court of Appeals filed and entered its decision and opinion in said case. Thereafter on the 27th day of November, 1943, said United States Circuit Court of Appeals entered its decree in conformity with its previous opinion and decision.

The opinion of the court below, filed November the 6, 1943, is not yet reported, and for convenience is printed in an appendix to the brief filed with this petition. A copy of the Court's decree entered November 27, 1943, also for convenience, is also printed in an appendix to the brief filed with this petition.

The petitioner herein is a corporation organized under the laws of the State of Indiana and conducts business in Jasper, Indiana. It is engaged in manufacturing office chairs.

The Decision and Order of the Board contains the following language:

> "The Board has considered the Intermediate Report, the exceptions and the brief, and the entire record in the case, and hereby adopts the Findings, Conclusions, and Recommendations of the Trial Examiner" (B. A. 14).

The Board did not state its findings of fact in its Decision and Order, or in any other manner, unless the hereinabove quoted sentence from its Decision and Order shall be construed to be a statement by the Board of its findings of fact.

It is the contention of the petitioner herein, as hereinafter set out, that the Board did not state its findings of fact, and, having so failed, its purported Order is without force and effect. Furthermore, it is the contention of this petitioner that the court below erred in issuing any enforcement order under the circumstances just set out.

Upon the assumption, but without conceding it to be so, that the Board's order is valid, then the Board made a finding with reference to the discharge of Leo Lannan, an employe, and an order directing his immediate and full reinstatement, together with the further order that the said Leo Lannan be made whole for any loss of pay he may have suffered by reason of his discriminatory dis-

charge. By its opinion, decision and decree, the court below decreed enforcement of the foregoing portion of the Board's order. It is the position of the petitioner herein that there is no substantial evidence whatever, under the applicable decisions on the subject, which will support a finding that Leo Lannan was discriminatorily discharged, and consequently no justification in law for the court's decree requiring the petitioner herein to reinstate him and to make him whole for any loss of pay he may have suffered.

By its opinion, decision and decree, the court below has ordered enforcement of the Board's Order against the petitioner herein, based upon a proposed finding of the Board that this petitioner was guilty of an unfair labor practice because its Superintendent on one Thursday night during the month of November, 1941, was seen standing upon the north steps of the Courthouse in Jasper, Indiana, at about 9 o'clock in the evening, while the members of the complaining union were leaving a union meeting. The exit from the meeting hall where the meeting was held was at street level on the public square which surrounds the Courthouse, and was in plain view of the Superintendent, who was charged with having stood on the Courthouse steps approximately 100 feet across the street from such exit.

By its opinion, decision and decree, the court ordered that this petitioner shall cease and desist from:

> "(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining and other mutual aid or protection, as guaranteed in Section 7 of the Act." (See Appendix 2 to brief filed herewith.)

The unfair labor practices complained of are alleged to have been in violation of subsections (1) and (3) of Section 8 of the Act. Much of the evidence introduced for the purpose of showing a violation of subsection (1) of Section 8 has to do with the discharge of Leo Lannan, and, of course, the only violation of subsection (3) of Section 8 deals with the Leo Lannan case. Consequently, this petitioner urges that the order entered against it is excessively broad, even though it is found guilty of the violations set out in the Trial Examiner's Intermediate Report.

This petitioner contends that it did not violate either subsection (1) or (3) of Section 8 with respect to Leo Lannan, and further contends that, under all of the evidence, no cease and desist order of any kind should have been made and entered against it by the court below.

II.

BASIS OF JURISDICTION.

(a) Jurisdiction is invoked under **Sections 237 (b) and 240 (a) of the Judicial Code, as amended February 13, 1925 [43 Stat. 937, 28 U. S. C. A., Section 344 (b), 347 (a)].**

(b) The United States Circuit Court of Appeals for the Seventh Circuit made and filed its opinion and decision herein and subsequently entered its order and decree herein acting on the authority contained in **Section 10 (e) of the National Labor Relations Act [49 Stat. 449, 29 U. S. C. A., Section 160 (e)].**

(c) The opinion of the United States Circuit Court of Appeals for the Seventh Circuit was filed November 6, 1943; the decree was entered by said Circuit Court of Appeals on November the 27th, 1943. On November 24, 1943, the United States Circuit Court of Appeals for the Seventh Circuit entered an order staying enforcement and execution of judgment and decree pursuant to its Rule 25. (Note:

The decree was actually not entered until November 27, 1943.) Thereafter, on December 27, 1943, and upon application of this petitioner the said United States Circuit Court of Appeals made and entered an order further staying the execution and enforcement of its judgment and decree for thirty days, pursuant to the provisions of its Rule 25.

The opinion and decision of November 6, 1943, of the United States Circuit Court of Appeals for the Seventh Circuit and the order and decree of November 27, 1943, of said Circuit Court of Appeals were entered in a proceeding contemplated by **Section 10 (e) of the National Labor Relations Act**, supra.

The questions involved are substantial for the reasons:

1. That the order and decree of the United States Circuit Court of Appeals for the Seventh Circuit seeks to enforce a decision and order of the National Labor Relations Board, which order, this petitioner contends, does not include the Labor Board's findings of fact, and, therefore, in effect, is a denial of due process to this petitioner.

2. That the order and decree of the United States Circuit Court of Appeals for the Seventh Circuit in most respects, if not entirely, is not supported by substantial evidence.

3. That the order and decree of the United States Circuit Court of Appeals for the Seventh Circuit contains a cease-and-desist order which is not limited to the specific acts which were found to be, and supported by substantial evidence as constituting, unfair labor practices. The cease-and-desist order, as written by the aforesaid United States Circuit Court of Appeals, is excessively broad and works in effect as a blanket injunction against this petitioner.

III.

QUESTIONS PRESENTED.

1. Whether or not the National Labor Relations Board did "* * * state its findings of fact * * *" in its decision and order in the instant case, when, so far as its own findings of fact were concerned, it simply inserted this sentence in its said decision and order: "The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions and recommendations of the Trial Examiner."

2. Whether or not, under the state of the record in this case and the peculiar facts revealed by the testimony in this case, there is any substantial evidence justifying (a) a finding that Leo Lannan, a former employe of the Company, was discriminatorily discharged, and (b) justifying an order requiring this petitioner to offer the said Leo Lannan immediate and full reinstatement to his former or substantially equivalent position, and also requiring this petitioner to make whole Leo Lannan for any loss of pay he may have suffered by reason of this petitioner's discrimination against him.

3. Whether or not it is an unfair labor practice within the meaning of the National Labor Relations Act for this petitioner's superintendent to stand on the steps of the county courthouse at 9 o'clock during an evening in November, 1941, when the place where he was standing was well lighted, considering the fact that the exit from the union hall was on the public square approximately one hundred feet from where the superintendent was standing, and which exit was within the clear view of the superintendent, and at a time when the complaining Union was holding one of its regular weekly meetings.

4. Whether or not in the instant case a blanket cease and desist order can be made and entered against this petitioner, whereas at the most petitioner was found guilty of having violated only to a small and limited degree the provisions of two subsections of Section 8 of the National Labor Relations Act. In this connection attention is called to the fact that this petitioner denies that there is any substantial evidence justifying a finding of violation of subdivision 3 of Section 8 as the only evidence with reference to a violation of subdivision 3 relates to Leo Lannan. This petitioner further urges that with the Leo Lannan transaction being eliminated there remains in the record only some minor misconduct which involves solely a violation of subdivision 1 of Section 8—so minor in fact this petitioner contends that an adverse finding against it is unjustified.

IV.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. The first of the four questions herein presented pertains to the action of the court below in issuing its enforcement order of the Decision and Order of the National Labor Relations Board in the instant case, which Decision and Order of said National Labor Relations Board, according to the contention of this petitioner, did not and does not "state its findings of fact." Section 10 (c) of the National Labor Relations Act contains the following sentence:

> "If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, **then the Board shall state its findings of fact**, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and

take such affirmative action, including reinstatement of employes, with or without back pay, as will effectuate the policies of this Act." (Emphasis supplied.)

The Decision and Order in the instant case merely contains the following sentence:

> "The Board has considered the Intermediate Report, the exceptions and the brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner."

This petitioner contends that the inclusion of such a sentence in the Board's Decision and Order is not a compliance with the positive mandate and requirement contained in Section 10 (e) of the National Labor Relations Act, the pertinent portion of which is hereinabove quoted.

Certiorari should be allowed with reference to this first question because the United States Circuit Court of Appeals for the Seventh Circuit in this cause decided an important question of federal law which has not been, but should be, settled by this court.

2. The second of the four questions herein presented pertains to (a) the affirmance by the court below of the purported finding of the National Labor Relations Board that this petitioner violated subsections (1) and (3) of Section 8 of the National Labor Relations Act by discharging Leo Lannan, and (b), the inclusion by the court below in its Order and Decree of the two provisions, one of which requires this petitioner to offer the said Leo Lannan immediate and full reinstatement, etc., and the other of which requires this petitioner to make whole the said Leo Lannan for any loss of pay, etc.

It is the contention of this petitioner that there is no substantial evidence which will support a finding that

there was a violation on the part of this petitioner of subsections (1) or (3) of Section 8 with reference to Leo Lannan. Consequently, there should be no adverse finding against this petitioner with reference to Leo Lannan and no order should be made against this petitioner requiring that it reinstate Leo Lannan or make him whole for any loss of pay he may have sustained.

Certiorari should be allowed with reference to this second question because the court below decided a federal question in a way probably in conflict with applicable decisions of this court. It thus probably erroneously included in that portion of its decree requiring affirmative action two provisions with reference to the said Leo Lannan. The decision of the court below in the instant case is probably in conflict with the following decisions, among others, of this court:

> **Consolidated Edison Co. of New York, Inc., et al. v. National Labor Relations Board et al., 305 U. S. 197;**
>
> **National Labor Relations Board v. Columbian Enameling & Stamping Co., Inc., 306 U. S. 292.**

3. The third of the four questions herein presented pertains to the making by the court below of an enforcement order against this petitioner upon a purported finding of fact that this petitioner violated subsection 1 of Section 8 of the National Labor Relations Act because its superintendent stood on the steps of the county courthouse at 9 o'clock during an evening in November, 1941, when the place where he was standing was well lighted, simply because the entrance to and exist from the union hall was on the public square approximately one hundred feet from where the superintendent was standing, and which exit was within the clear view of the superintendent, and at a time when the complaining Union was holding one of its regular weekly meetings.

It is the contention of this petitioner that there is no substantial evidence in the record to support such purported finding of fact. Consequently there should be no adverse finding against the petitioner with reference to the episode concerning the superintendent standing on the courthouse steps.

Certiorari should be allowed with reference to this third question because the court below decided a federal question in a way probably in conflict with applicable decisions of this Court. The decision of the court below in the instant case is probably in conflict with the following decisions, among others, of this Court:

> **Consolidated Edison Co. of New York, Inc., et al. v. National Labor Relations Board et al., 305 U. S. 197;**
>
> **National Labor Relations Board v. Columbian Enameling & Stamping Co., Inc., 306 U. S. 292.**

4. The fourth of the four questions herein presented pertains to that portion of the opinion and decision of the court below granting enforcement against this petitioner of the provision contained in the order of the National Labor Relations Board and subsequently included in the order and decree of the court below as follows:

> **"(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right of self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining and other mutual aid or protection, as guaranteed in Section 7 of the Act."**

Petitioner contends that the facts in this case do not require or even justify any cease and desist order. In any event the scope of the order must be so limited as to pre-

vent such violations, the threat of which in the future is indicated because of their similarity or relation to those unlawful acts which have been previously committed. The portion of the cease and desist order hereinabove quoted is in effect a blanket injunction and certiorari should be allowed with reference to the last of the four questions presented because the court below decided a federal question in a way probably in conflict with an applicable decision of this court. The court below thus probably erroneously included in its cease and desist order the portion thereof hereinabove quoted. The decision of the court below in the instant case in this regard is probably in conflict with the following decision:

National Labor Relations Board v. Express Publishing Co., 312 U. S. 426.

Wherefore, it is respectfully submitted that this petition for writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the Seventh Circuit should be granted.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1943.

No.....

JASPER CHAIR COMPANY, a Corporation,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

BRIEF

In Support of Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

I.

THE OPINION.

The opinion of the United States Circuit Court of Appeals for the Seventh Circuit, filed November 6, 1943, is not yet reported. For convenience, a copy thereof is at-

tached to this brief as Appendix No. 1. Also attached hereto as Appendix No. 2 is a copy of the Order and Decree of said Circuit Court of Appeals in said proceeding, and which was entered November 27, 1943.

II.

A CONCISE STATEMENT OF THE GROUNDS UPON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

This statement is set out in the preceding Petition under II, "Basis of Jurisdiction" (pp. 5-6), which is hereby adopted and made a part of this brief by reference.

III.

A CONCISE STATEMENT OF THE CASE CONTAINING ALL THAT IS MATERIAL IN THE CONSIDERATION OF THE QUESTIONS PRESENTED.

This statement is set out in the preceding Petition under I (pp. 1-5) and IV (pp. 8-12), which is hereby adopted and made a part of this brief by reference.

IV.

SPECIFICATION OF THE ASSIGNED ERRORS WHICH ARE URGED.

This specification is set out in the preceding Petition under III thereof (pp. 7-8), which is hereby adopted and made a part of this brief by reference.

V.

THE ARGUMENT.

1. The National Labor Relations Board included in its Decision and Order the following sentence:

> "The Board has considered the Intermediate Report, the exceptions and the brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner."

It included in its Decision and Order no other findings of fact.

Section 10 (c) of the National Labor Relations Act contains the following sentence:

> "If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, **then the Board shall state its findings of fact** and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act." (Emphasis supplied.)

The statute contains a mandatory provision that if the Board shall be of the opinion that one named in a complaint has engaged in or is engaging in a charged unfair labor practice, "then the Board shall state its findings of fact."

A statement such as that set out in the Board's Decision and Order, adopting the findings, conclusions and recommendations of the Trial Examiner, is not, in the opinion of this petitioner, a compliance with the statutory mandate in this regard. Manifestly, the Congress intended that the Board should state its findings. In all probability Congress had in mind the responsibility it desired to impose upon

the Board. It is true that this court has held that it is not the function of the court "to probe the mental process" underlying a Board's decision. It is also true this court has held that courts must accord to the Board's decisions the presumption of regularity to which they are entitled. These observations, however, do not go to the point, and that is: The statute definitely requires the Board to state its findings. For the Board to say that it has considered the Intermediate Report, the exceptions and the brief, and the entire record in the case, and by its finding and order adopts the findings, conclusions and recommendations of the Trial Examiner, in the opinion of this petitioner, definitely denies the statutory mandate requiring the Board to state its findings of fact.

The so-called "historic practice" set out by this court in its opinion in **Crowell v. Benson, 285 U. S. 22,** refers to a Congressional enactment which did not contain a clause similar to the one found in Section 10 (c) of the National Labor Relations Act, and hereinabove set out.

If fact finding were merely a ministerial function, it might be delegated by the Board to its Trial Examiner. However, to say the least, such power is quasi judicial in its nature and cannot be delegated.

> Cf. Cudahy Packing Co. v. Holland, Administrator, 315 U. S. 357, 788.

When the Board said it had considered certain matters presented to it and adopted the findings of its Trial Examiner, it in effect has said that it did not make its own findings.

Findings of fact in an unfair labor practice case before the National Labor Relations Board are far too important to be lightly considered. The Act itself provides that the usual rules of evidence in courts of law shall not prevail. The Act also prevents a reviewing court from disturbing a finding based upon substantial evidence.

Therefore, what may seem to be a mere trifle at the hearing and what may simply be hearsay evidence can ripen into a finding which will ultimately be the basis of an injunction by a United States Circuit Court of Appeals, and the violation of which would place in jeopardy the liberty of an offender.

Concluding this branch of the argument, this petitioner urges that under no circumstances should the National Labor Relations Board be permitted to deviate one bit from the strict statutory requirement that it shall state its findings.

2. In its decision and opinion the court below granted enforcement of a Board order which held that this petitioner had violated subsections (1) and (3) of Section 8 of the National Labor Relations Act when it discharged Leo Lannan. Such a purported finding does not, in the opinion of this petitioner, involve merely a choice on the part of the fact finding body of who to believe or who not to believe where evidence is conflicting, nor does it involve what inferences the fact finding body may draw from conflicting evidence. The point in connection with Lannan is this—to infer that he was discharged because of his Union activity means that the fact finding body is drawing a finding based upon such inference in total disregard of and in direct contradiction to the positive and uncontradicted and corroborated evidence of witnesses who testified that his discharge was because of his conduct and not because of his alleged Union activity. A detailed discussion of the evidence would consume more space than this petitioner understands is permitted in this brief. However, the testimony in the record before the Court with reference to Lannan, this petitioner states, will abundantly support the statements contained in this brief on this subject.

It is the position of the petitioner with reference to Lannan that there is no substantial evidence justifying a

purported finding of fact that he was discharged in violation of subsections (1) and (3) of Section 8 of the National Labor Relations Act.

> Consolidated Edison Co. v. National Labor Relations Board, 305 U. S. 197, at 229;
> National Labor Relations Board v. Columbian Enameling & Stamping Co., Inc., 306 U. S. 292, at 299 and 300.

In the case last cited this Court said:

> "Substantial evidence is more than a scintilla, and must do more than create a suspicion of the existence of the fact to be established. 'It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.' "

Evidence in the record is positive to the effect that Lannan was discharged for reasons and causes entirely foreign to his Union activity. It is no more than a suspicion—certainly not by inference—that there could be a finding, or a purported finding, that this petitioner discharged Lannan because of Union activity.

3. The third question presented deals with a purported finding to the effect that this petitioner was guilty of an unfair labor practice because its superintendent was seen standing on the Court House steps in Jasper, Indiana, at 9 o'clock on one Thursday evening in November, 1941. The record shows that the Court House is situated in the center of a public square, and that the Court House and the surrounding square are and on that night were well lighted. The record further shows that on the night in question the complaining Union was holding one of its regular weekly meetings in a hall the entrance to which was on the public square, and that said entrance was approximately one hundred feet from the point where the superintendent was alleged to have been standing. It is fair to infer from the record that the Union selected its meeting place a long

period of time after the Court House was erected. The superintendent specifically denies that he was on the square any evening other than when the municipal band conducted concerts. He remembers that because his boy played in the band and he came to town to hear the band concerts. However, leaving out of this discussion these conflicts which involve the question as to whether or not the superintendent was on the Court House steps at that particular time, let us assume that the superintendent was on the Court House steps at the indicated time and that he knew that the complaining Union was holding a meeting on that particular night. Then, from what rule or principle does the strange finding derive that a citizen of a community, simply because he holds a supervisory position for a manufacturing concern, must avoid being seen, more than that, must avoid being at a place where he could see who would enter or come out of the meeting place deliberately selected by the Union, which was presumably engaged in organizing the employes in his plant? The record shows that over a long period of time, probably a year, the superintendent was seen on the public square on three different occasions. On one occasion he was on the Court House steps, and on each of the other two occasions, according to the evidence, he was at some other point on the public square.

This petitioner insists that a finding of an unfair labor practice predicated on these facts is not sustained by any substantial evidence.

4. The court below in its decision and opinion held that it would issue a decree, and thereafter did make and enter a decree, against this petitioner, including the following:

> "(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in

concerted activities for the purposes of collective bargaining and other mutual aid or protection, as guaranteed in Section 7 of the Act."

This petitioner respectfully urges that to include the above quoted provision is a violation of the rule laid down by this Court in its decision in **National Labor Relations Board v. Express Publishing Company, 312 U. S. 426.**

The petitioner urges that there should be no finding or order made against it with reference to the Lannan transaction. Consequently, there would not be any violation whatever of subdivision (3) of Section 8 of the Act. If its position is correct in this regard, then all that remains in this case are some minor matters which could only be considered violations of the generalizations included in subdivision (1) of Section 8 of the Act, and would be insufficient to justify any adverse order. Of course, if this petitioner is correct in these contentions, then the entire cease and desist order will go out. Assuming, however, that the Lannan transaction remains and a finding and order is made against this petitioner with respect thereto, it is nevertheless the contention of this petitioner that the hereinabove quoted portion of the order, which also, of course, is in the court's decree, must of necessity either be entirely eliminated or very substantially restricted in order to conform with the rule laid down by this court in **National Labor Relations Board v. Express Publishing Company**, supra.

If the above quoted clause is permitted to remain, then this petitioner will be required to conduct all of its labor relations with the threat of contempt proceedings hanging over its head. Each time it engages the services of a prospective employe, or discharges an employe, or shifts an employe from one job to another, or decreases the rate of compensation of an employe, or temporarily lays off an employe, or does any one of many other things required

from day to day in operating a manufacturing plant, it must first stop and measure its conduct, and probably obtain legal advice, to determine whether or not it is in actual or threatened danger of contempt of the United States Circuit Court of Appeals for the Seventh Circuit. This petitioner submits such a condition should not be permitted to exist under the facts, as revealed by the record in this case. On the contrary, to permit such a condition would defeat the announced purpose of the National Labor Relations Act.

5. In the preceding petition under the heading "Reasons Relied on for Allowance of the Writ," this petitioner has set out in connection with each of the four questions presented the reason why it is entitled to have its petition herein granted. No good purpose can be served by again discussing these reasons, as such discussion would be merely a repetition of what is set out in the petition, as aforesaid.

Respectfully submitted,

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APPENDIX NO. 1.

In the
United States Circuit Court of Appeals
For the Seventh Circuit.

No. 8275. October Term and Session, 1943.

National Labor Relations Board,
Petitioner,
vs.
Jasper Chair Company, a Corporation,
Respondent.

Petition for Enforcement of an Order of the National Labor Relations Board.

November 6, 1943.

Before Kerner and Minton, Circuit Judges, and Lindley, District Judge.

Kerner, Circuit Judge. The Board found that the respondent had been and was engaged in unfair labor practices affecting commerce within the meaning of § 2 (6) and (7) of the National Labor Relations Act, 29 U. S. C. A. § 152 (6), (7), in discriminatorily discharging Leo Lannan, an employee, and in interfering with the rights of its employees guaranteed them under § 7 of the Act, § 157—thus violating § 8 (1) and (3) of the Act, § 158 (1), (3).

Respondent, an Indiana corporation, manufactures office and school chairs at its plant in Jasper, Indiana, where it employs about 128 production workers. No jurisdictional question is presented.

Respondent resists the Board's order that it cease and desist from the unfair labor practices found, reinstate Lannan with back pay, and post appropriate notices, on the ground (1) that the Board never found the facts upon which the order is based, independently, and if it did, (2) that the findings of facts are not supported by substantial evidence.

First: The point is made that under Section 10 (c) of the Act, § 160 (c), it is mandatory on the Board to make its own findings. That section provides that "If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any * * * unfair labor practice, then the Board shall state its findings of fact * * *." Attention is also called to Section 37 of Art. II of the Board's Rules and Regulations, Series 2, as amended, which provides that: "After a hearing for the purpose of taking evidence * * * the Board may—(a) direct that the Trial Examiner prepare an Intermediate Report * * *: or (c) issue proposed findings of fact, proposed conclusions of law, and proposed order." It is then argued that because the Board in its decision and order states that the Board "hereby adopts the findings, conclusions, and recommendations of the Trial Examiner," it made no determination of the ultimate facts; consequently, no valid order could issue against the respondent. With this argument, under the state of the record here appearing, we are unable to agree.

It is true that by the provisions of the Act the Board is required to make a finding of the ultimate facts upon which the order is bottomed, and in forming its decision and order it must consider all the evidence.

In this case, pursuant to Section 10 (b) of the Act, § 160 (b), the Board designated a trial examiner to hear the cause. He heard and considered all the evidence and issued his "Intermediate Report" in which he made elaborate separate specific findings of facts, to the effect that

the respondent was engaged in certain unfair labor practices. To this report respondent filed exceptions. Thereafter the Board, after considering "the entire record in the case," adopted the findings of the trial examiner.

With respect to the unfair labor practices, the findings were that in August, 1941, respondent's employees had formed a local union, held regular meetings, and were soliciting membership therein. To these activities, and to prevent solicitation of its employees, respondent's superintendent and foreman indicated hostility by the interrogation of employees and by threats and intimidatory remarks and surveillance of union meetings. Statements of the superintendent and the foreman indicating their dislike and opposition to the union were quoted in the findings. The findings also set forth the circumstances of the discharge of Lannan and concluded that his discharge was because of his adherence to the union.

We observe that no special form or style in which the findings shall be cast is prescribed in the Act or in the Board's rules, and we have been told that it is not our function "to probe the mental processes" underlying the Board's decision. Morgan v. United States, 304 U. S. 1, 18. So, where the Board declares that it has considered "the entire record in the case," it cannot be said that the Board did not consider the evidence, and we must accord its decision the presumption of regularity to which it is entitled, Morgan v. United States, 298 U. S. 468, and Inland Steel Co. v. National Labor Relations Board, 105 F. 2d 246. Perhaps the better practice would be to have the Board enumerate independently its findings of the ultimate facts. However, so long as it makes an independent determination of the issues and satisfies the due process requirements, we cannot say that the particular procedure adopted by the Board in stating its findings of fact, in this case, made the decision and order invalid.

Second: On the question of substantial evidence, we are of the opinion that from the entire record the order of the Board is supported, H. J. Heinz Co. v. National Labor Relations Board, 311 U. S. 514; Rapid Roller Co. v. National Labor Relations Board, 126 F. 2d 452; National Labor Relations Board v. Nevada Consolidated Copper Corp., 316 U. S. 105; National Labor Relations Board v. Chicago Apparatus Co., 116 F. 2d 753, and the order is valid, National Labor Relations Board v. Express Publishing Co., 312 U. S. 426; Wilson & Co. v. National Labor Relations Board, 124 F. 2d 845, except as noted below.

The order of the Board will be enforced, but with the modification that the words "successors, and assigns" in the preamble shall be stricken; there will be inserted in paragraph 1 (a) after the word "employees" the words "of their own choosing"; and in subsection 3 of paragraph 2 (c) after the word "Organizations," the words "or any other organization of their own choosing."

It Is So Ordered.

A true Copy:

Teste:

.....

Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

APPENDIX NO. 2.

In the United States Circuit Court of Appeals
For the Seventh Circuit.

No. 8275.

October Term and Session, 1943.

National Labor Relations Board, Petitioner,

v.

Jasper Chair Company, a Corporation, Respondent.

On Petition for Enforcement of an Order of the National Labor Relations Board.

DECREE.

This cause coming on to be heard upon petition of the National Labor Relations Board for enforcement of an order issued by it against Jasper Chair Company, a corporation, dated December 31, 1942, and the Court on November 6, 1943, having rendered its opinion with respect thereto, accordingly, in conformity therewith

It Is Hereby Ordered, Adjudged and Decreed that Jasper Chair Company, Jasper, Indiana, and its officers and agents, shall:

1. Cease and desist from:

(a) Discouraging membership in the United Furniture Workers of America, Local No. 331, affiliated with the

Congress of Industrial Organizations, or any other labor organization of its employees, of their own choosing, by discharging any of its employees or in any other manner discriminating in regard to the hire or tenure of employment, or any term of condition of employment of its employees;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining and other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Leo Lannan immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority and other rights and privileges;

(b) Make whole Leo Lannan for any loss or pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to that which he normally would have earned as wages from February 17, 1942, to the date of the respondent's offer of reinstatement, less his net earnings, if any, during said period;

(c) Post immediately in conspicuous places throughout its Jasper, Indiana, plant and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Decree; (2) that the respondent will take the affirmative

action set forth in paragraphs 2 (a) and (b) of this Decree; and (3) that the respondent's employees are free to become or remain members of United Furniture Workers of America, Local No. 331, affiliated with the Congress of Industrial Organizations, or any other organization of their own choosing, and that the respondent will not discriminate against any employee because of membership in or activity on behalf of that organization;

(d) Notify the Regional Director of the Fourteenth Region in writing, within ten (10) days from the date of this Decree what steps the respondent has taken to comply herewith.

.....
Judge, United States Circuit Court of Appeals for the Seventh Circuit.

.....
Judge, United States Circuit Court of Appeals for the Seventh Circuit.

.....
Judge, United States Circuit Court of Appeals for the Seventh Circuit.

No. 615

In the Supreme Court of the United States

OCTOBER TERM, 1943

JASPER CHAIR COMPANY, A CORPORATION,
PETITIONER,

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

INDEX

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (Pet. 23–26) is reported in 138 F. (2d) 756. The findings of fact, conclusions of law, and order of the National Labor Relations Board (B. A. 13–33)[1] are reported in 46 N. L. R. B. 528.

[1] For the convenience of the Court, the method of referring to the record adopted by the petitioner is used throughout this brief. Thus the appendix filed by the Board in the court below is referred to as "B. A.," and the appendix filed in the court below by the petitioner (there the respondent) is referred to as "R. A."

JURISDICTION

The decree of the court below (Pet. 27–29) was entered on November 27, 1943. The petition for a writ of certiorari was filed on January 20, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether there is substantial evidence to support the findings of the Board, which were sustained by the court below, that petitioner, by interrogating employees regarding union affiliation, by making threatening and intimidatory remarks, by keeping union meetings under surveillance, and by discriminatorily discharging an employee, has committed unfair labor practices in violation of Section 8 (1) and (3) of the Act.

2. Whether, in the circumstances of this case, the cease and desist provisions of the Board's order are unduly broad.

3. Whether the Board may, after considering the entire record in the case, adopt as its own those findings of fact and conclusions of law of its Trial Examiner with which it agrees.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set out in the Appendix, *infra*, p. 14.

STATEMENT

Upon the usual proceedings, the Board, on December 31, 1942, issued its findings of fact, conclusions of law, and order (B. A. 13–33). In accordance with its recent practice, the Board wrote its Decision and Order in memorandum (or short) form. Thus, after reciting that it had considered the Intermediate Report of its Trial Examiner, petitioner's exceptions thereto, the latter's brief in support of said exceptions, and the entire record in the case, the Board stated that it "hereby adopts the findings, conclusions, and recommendations of the Trial Examiner"; it then set forth its Order (B. A. 13–15). The Intermediate Report is attached to the Board's Decision and Order (B. A. 16–33). The pertinent facts, as found by the Board, and shown by the evidence, may be summarized as follows:[2]

In August 1941, a campaign was initiated to organize the employees of the furniture factories of Jasper, Indiana, including that of petitioner (B. A. 18–19; 98, 99, 139–140). During September, in furtherance of this campaign, the union[3] conducting the campaign held a mass meeting in the Jasper court house (B. A. 19; 149, 166).

[2] In the following statement the references preceding the semicolon are to the Board's findings; the succeeding references are to the supporting evidence.

[3] United Construction Workers Organizing Committee, Local No. 331, which later became Local 331 of the United Furniture Workers of America—both affiliated with the C. I. O. (B. A. 18, note 2; 91, 94–95, 138–140).

Thereafter, it held regular meetings and social affairs at a downtown hall, and attempted to augment its membership and encourage attendance at its meetings by distributing literature and making other public announcements (B. A. 19, 20, 23–24; 92, 146, 154, 155).

A day or two after the Union's initial mass meeting, petitioner's superintendent, William Schwinghamer, approached an employee at work and after accusing him of having attended the meeting, stated, "If you fellows ain't satisfied with what you are getting around here, you can go somewhere else and work" (B. A. 19; 39, 149–150). As the Union's organizational efforts continued, Superintendent Schwinghamer interrogated three other employees respecting their union sympathies and activities, and strongly expressed his hostility to the Union. He indicated obvious disgust with one of these employees, demanded to know why another was "an awfully strong union member," and warned the third not to "start any trouble in here." (B. A. 19–20, 24–25; 163–165, 154–155, 160–162, 166–167, 172–173.) Another of petitioner's supervisors, Foreman Winkler, denounced the Union to a subordinate employee, accusing it of being linked with Communism (B. A. 20; 163–164, 176). On other occasions, petitioner attempted to discourage attendance at union meetings and to prevent solicitation of its employees by the Union, by resorting to open surveillance of union meetings, and by explicit

threats and other hostile remarks (B. A. 20–24; 35, 52–54, 114–117, 133–138, 142–145, 147–148, 106–107, 150–151, 155–156, 162, 91–93).

The Board found that petitioner "has engaged in a course of action for the purpose of interfering with the self-organization of its employees by interrogating employees regarding union affiliations; by making derogatory remarks regarding the Union; by intimidating and attempting to intimidate employees and other persons participating in union activities; by interfering with union organization and activities; and by keeping under surveillance union meetings and activities * * *" (B. A. 25), and thereby "has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act" (B. A. 26).

Leo Lannan, who had been continuously employed by petitioner for about 17 years (B. A. 26; 100), joined the Union in November 1941, and thereafter attended meetings and solicited membership for the Union (B. A. 21, 28; 104–106, 141–142, 156–157, 167). Superintendent Schwinghamer promptly confronted Lannan with the fact that he knew of Lannan's union activities, and made his disapproval of them plain by denouncing the Union, by stating that he "had a notion to fire" Lannan, and by threatening to make it "damn hard" on him (B. A. 21; 106–107, 150–151).

Lannan, who was 50 years old, operated various machines in petitioner's plant; this required

some skill and involved light work (B. A. 21–22; 47, 100–103, 110, 117, 185). However, shortly after his activities in the Union had come to petitioner's notice, the latter made good his threats to "make it hard on him" and to discharge him. On February 17, 1942, Schwinghamer arbitrarily ordered Lannan to leave his accustomed work in the plant and to go out into the yard to help unload lumber. The day was cold, and Lannan, who had been working near a heater in the plant, was lightly dressed. In addition, Lannan was still ill from the effects of dental surgery which he had undergone a few days earlier. When, therefore, he was ordered to transfer to arduous laboring work which he had not done for 5 years past, and which was customarily done by younger and less skilled employees, he pointed out that his physical condition and inadequate clothing made it impossible for him to carry out these instructions. (B. A. 21–22, 27–28; 41, 103, 107–110, 117, 121–122, 125–126, 128, 130–131, 151–152, 160, 183–184.) Schwinghamer thereupon consulted petitioner's president, and then summarily handed Lannan his pay check saying, "Now, by God, you are fired. Go up and let Andy Bettag [president of the Union] get you a job" (B. A. 22; 40, 108, 138, 145–146, 216).

The Board found that "both Schwinghamer's request on February 17 that Lannan go into the yard and his subsequent discharge of Lannan because he tried to explain that he could not,

stemmed from Schwinghamer's resentment against Lannan because of Lannan's activities on behalf of the Union," and that petitioner, by such discharge and its subsequent refusal to reemploy him, discriminated in regard to the hire and tenure of employment of Lannan, and thereby discouraged membership in the Union, and interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act (B. A. 28–29).

Upon findings that petitioner's conduct as above summarized constituted unfair labor practices within the meaning of Section 8 (1) and (3) of the Act (B. A. 30–31), the Board ordered petitioner to cease and desist from the unfair labor practices found, from in any other manner interfering with, restraining, or coercing its employees in the exercise of their rights as guaranteed in Section 7 of the Act, to offer reinstatement with back pay to Lannan, and to post appropriate notices (B. A. 14–15).

On March 17, 1943, the Board filed in the court below its petition for enforcement of its order against petitioner (B. A. 1–4). On November 6, 1943, the court handed down its opinion (Pet. 23–26), and on November 27, 1943, entered its decree (Pet. 27–29), enforcing the Board's order in full.

ARGUMENT

1. Petitioner's contention (Pet. 4, 9–11, 17–19) that the Board's findings of unfair labor practices

are not supported by substantial evidence presents no question of general importance. In any event, the evidence summarized in the Statement (*supra*, pp. 3 to 7) affords full support for the challenged findings, as the court below held (Pet. 26).

2. Petitioner contends (Pet. 11–12, 19–21) that the provision of the order which restrains it from in any manner infringing the rights guaranteed to employees under Section 7 of the Act is invalid under the principles enunciated in *National Labor Relations Board* v. *Express Publishing Co.*, 312 U. S. 426. But in the *Express Publishing* case, this Court recognized that the "breadth of the order * * * must depend upon the circumstances of each case" (312 U. S. at 436). In that case, there was only an isolated refusal to bargain collectively. In the instant case, proof exists of numerous independent violations of Section 8 (1) which were of the same type as the order prohibits. This circumstance of itself suffices to support the order. Moreover, in this case, the violations were so numerous and varied, and demonstrated such open hostility to the Union as to furnish ample basis for the belief that other violations were likely to occur unless restrained—a second sufficient ground for the broad type of cease and desist order. Provisions identical to the one here in controversy were enforced in *National Labor Relations Board* v. *Automotive Maintenance Machinery Co.*, 315 U. S. 282; *Na-*

tional Labor Relations Board v. *Electric Vacuum Cleaner Co.*, 315 U. S. 685; and *National Labor Relations Board* v. *Nevada Consolidated Copper Corp.*, 316 U. S. 105. Contentions similar to that raised by petitioner were presented to this Court by the employers in *Owens-Illinois Glass Co.* v. *National Labor Relations Board*, 123 F. (2d) 670 (C. C. A. 6), certiorari denied, 316 U. S. 662; *Wilson & Co.* v. *National Labor Relations Board*, 126 F. (2d) 114 (C. C. A. 7), certiorari denied, 316 U. S. 699; *National Labor Relations Board* v. *Algoma Net Co.*, 124 F. (2d) 730 (C. C. A. 7), certiorari denied, 316 U. S. 706; and *Butler Bros.* v. *National Labor Relations Board*, 134 F. (2d) 981 (C. C. A. 7), certiorari denied, November 22, 1943, No. 274, present Term.

3. Petitioner asserts also that the order is invalid because the Board's adoption of the findings and conclusions of its Trial Examiner amounted to a failure on the Board's part to state its findings of fact as is required by Section 10 (c) of the Act (Pet. 3, 8–9, 15–17). The style of the Decision and Order in the instant case follows a recently inaugurated practice of the Board to issue "short-form" decisions expressly adopting those findings and conclusions of the Intermediate Report which accord with the Board's own determination of the issues after it has studied the record and the exceptions and briefs, and has afforded the parties an opportunity for oral

argument before it.[4] This change from its former elaborate, independently stated findings of fact was effected primarily to expedite the disposition of cases, in response to the increasing case load occasioned by the rapid expansion of defense industries since the advent of the war.[5] In making the change, the Board was guided by the recommendations of the Attorney General's Committee on Administrative Procedure,[6] which after a survey of Board practices suggested that it would be desirable for the Board "in many cases to adopt as its own the trial examiner's findings and conclusions, subject, of course, to such alterations as might appear to be necessary in the light of the parties' arguments to the Board."[7]

When, as here, the Board agrees with and adopts the findings of the Trial Examiner *in toto*, it manifestly does not, contrary to petitioner's contention (Pet. 16), thereby delegate its fact-finding function. Because it thus "adopts the

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[4] *Sixth Annual Report of the National Labor Relations Board for the Fiscal Year Ended June 30, 1941*, United States Government Printing Office, Washington, D. C., pp. 8–9; *Seventh Annual Report*, pp. 9–13.

[5] See *Sixth Annual Report*, pp. 1–4; *Seventh Annual Report*, pp. 9–10.

[6] *Final Report of the Attorney General's Committee on Administrative Procedure, January 24, 1941* (Superintendent of Documents, Washington, D. C.); *Administrative Procedure in Government Agencies, Monograph of the Attorney General's Committee on Administrative Procedure*, Part 5.

[7] *Monograph of the Attorney General's Committee*, pp. 22–29.

exact or substantial phraseology of others, it does not follow that [the Board] has abdicated in favor of mental processes extrinsic [to its own]." *National Labor Relations Board* v. *Botany Worsted Mills*, 106 F. (2d) 263, 266 (C. C. A. 3). That the Board, in fact, has not, by means of the "short-form" decision, attempted to shirk its responsibility, is at once apparent from a cursory examination of the decisions already issued in this form. These reflect a painstaking decision-making process, indicating clearly in each case the respects in which the Trial Examiner's findings are adopted, rejected, or modified as they accord or disagree with the Board's own determination of the issues.[8] Furthermore, as the court below pointed out (Pet. 25), "where the Board declares that it has considered 'the entire record in the case' it cannot be said that the Board did not consider the evidence, and we must accord its decision the presumption of regularity to which it is entitled, *Morgan* v. *United States*, 298 U. S. 468, and *Inland Steel Co.* v. *National Labor Relations Board*, 105 F. (2d) 246 [(C. C. A. 7)]."

Petitioner insists, however, (Pet. 17), that "under no circumstances should the National

[8] See, *e. g.*, *Matter of Idaho Refining Co.*, 47 N. L. R. B. 1127; *Matter of Thompson Products, Inc.*, 46 N. L. R. B. 514; *Matter of Pacific Olive Co.*, 46 N. L. R. B. 1; *Matter of Bear Brand Hosiery Co.*, 46 N. L. R. B. 609; *Matter of Armour Fertilizer Works, Inc.*, 46 N. L. R. B. 629; *Matter of Mt. Clemens Pottery Co.*, 46 N. L. R. B. 714.

Labor Relations Board be permitted to deviate one bit from the strict statutory requirement that it shall state its findings." But this ignores the fact noted by the court below (Pet. 25), that "no special form or style in which the findings shall be cast is prescribed in the Act or in the Board's Rules * * *." Since petitioner does not even claim that its rights were in any way impaired or prejudiced by the Board's use of the "short-form" decision, or that the requirements of due process demand that the Board should have re-written, instead of having adopted by reference, findings with which it wholly agreed, its position is unduly technical, and its contentions raise no issue reviewable here. Cf. *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 349–351; *National Labor Relations Board* v. *Express Publishing Co.*, 312 U. S. 426, 431–432; *Morgan* v. *United States*, 304 U. S. 1, 17–18.

That the other circuit courts of appeal are uniformly in accord with the position of the court below, is plain, for of the "short-form" decisions thus far issued by the Board which have come before the courts, there has been no instance in which such an order has been refused enforcement on the ground urged herein by petitioner, or on any similar ground.

CONCLUSION

The decision below, sustaining the Board's order, is correct, and presents no conflict of decisions or question of general importance. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

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FEBRUARY 1944.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., 151 *et seq.*) are as follows:

> SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.
>
> SEC. 8. It shall be an unfair labor practice for an employer—
>
> (1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.
>
> * * * * *
>
> (3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization * * *.
>
> SEC. 10. * * *
>
> (c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

U. S. GOVERNMENT PRINTING OFFICE: 1944